11558 *PL II*

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-193414 DATE: October 1, 1979

MATTER OF: Amperif Corporation *[Protest of Navy Rejection of Proposal to Provide ADP Equipment]*

DIGEST:

1. Negotiations were proper where procuring agency orally advised protester of deficiencies in its proposal and gave protester opportunity to correct deficiencies.

2. Determination, based on failure of protester to supply required technical literature, that protester's proposal was technically unacceptable was not arbitrary or unreasonable and, therefore, not subject to GAO objection.

3. Proposal determined to be technically unacceptable after initial discussions may be eliminated from further consideration without request for "best and final" offer.

Amperif Corporation (Amperif) protests the rejection of its proposal to provide automatic data processing (ADP) equipment and services by the Automatic Data Processing Selection Office, Department of the Navy (Navy) on request for proposals (RFP) N66032-78-R-0007.

The RFP requested proposals for either UNIVAC equipment or plug-to-plug equipment compatible with a Government-owned UNIVAC 1108 central processor unit. If other than the exact UNIVAC model specified was offered, the solicitation required submission of appropriate technical literature for both the hardware and software characteristics of the items offered. The Navy rejected Amperif's proposal because it found the firm's literature to be inadequate to permit an effective technical evaluation.

The record shows that oral discussions were held
with Amperif and other offerors during which Amperif
was advised that its proposal was deficient because it
did not include technical literature for the DMS IV
Model 60 disk mass storage system. Amperif then submitted
literature concerning its SSD 432/1782 drum system and
indicated that identical equipment to that proposed was
installed and operating for the Navy. The Navy determined,
however, that only the drum system proposed was currently
in use by the Navy, not the disk system. Although addi-
tional requests were made to Amperif for literature
concerning the disk system, Amperif failed to provide
the information sought by the Navy. Consequently, the
contracting officer advised Amperif that its proposal
"has been determined to be unacceptable" because the
Navy "cannot determine if this mass storage system meets
the specifications of the solicitation."

As its bases for protest, Amperif complains of the
oral nature of the discussions, asserts that it provided
the agency with all necessary information, and objects
to the agency's failure to request the firm to submit
a best and final offer. We find the protest to be
without merit.

First, there is nothing improper with oral dis-
cussions. While the discussions must be meaningful,
they will be so regarded if they are sufficient to alert
an offeror to deficiencies in its proposal; there is no
need for those deficiencies to be pointed out in writing.
See, e.g., E-Systems, Inc., B-191346, March 20, 1979,
79-1 CPD 192. Here, Amperif was orally advised of the
perceived deficiencies in its proposal; it failed to
respond with all the requested technical literature for
its own reasons.

Second, Amperif asserts that it supplied the Navy
with sufficient information to enable it to evaluate
the equipment offered. However, the Navy's contention
that the equipment which Amperif indicated was installed
at another Navy facility "is listed as Model 5012-10
[while] the equipment offered for this requirement was
Model 3350-30" is not rebutted by the protester. The

Navy also denies Amperif's assertion that Amperif provided names of personnel with whom the contracting agency could check.
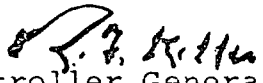
The procuring agency has the primary responsibility for evaluating the data supplied and ascertaining if it provides sufficient information to determine the acceptability of the item offered. Schottel of America, Inc., B-190322, February 15, 1978, 78-1 CPD 130; Racon, Inc., B-186864, September 29, 1976, 76-2 CPD 295. Such technical determinations by the procuring activity will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. Amperif Corporation, B-193294, March 19, 1979, 79-1 CPD 191; Schottel of America, Inc., supra; Racon, Inc., supra. Since the Navy ascertained that the installed equipment referenced by Amperif differed from what was to be purchased and since Amperif failed to provide adequate literature covering the equipment it offered or to satisfactorily explain the difference in model numbers, the determination by the Navy that the data furnished by Amperif was insufficient was not unreasonable or arbitrary.

(We note that Amperif's refusal to supply the technical literature required by the RFP was apparently predicated on proprietary concerns. We further note, however, that the RFP contains the DAR 3-507.1 clause entitled "Restrictions on Disclosure" which allows an offeror to restrict the Government's preaward use of the data to proposal evaluation and preventing disclosure of the data outside of the Government. Thus it appears that the RFP contained adequate safeguards to protect any proprietary data Amperif would have to submit to have its proposal evaluated.)

Third, with respect to Amperif's failure to be given the opportunity to submit a "best and final" offer, we need only point out that an offer which is not technically acceptable may be eliminated from the competitive range without further discussions and without any request

for a "best and final" offer. Science Applications, Inc.,
B-193229, May 23, 1979, 79-1 CPD 369; Telex Computer
Products, Inc., B-190794, July 31, 1978, 78-2 CPD 78;
Proprietary Computer Systems, Inc., 57 Comp. Gen. 800
(1978), 78-2 CPD 212. As the Navy properly determined,
after initial discussions, that Amperif's proposal was
not technically acceptable, the Navy was not required
to give Amperif an opportunity to submit a "best and
final" offer.

The protest is denied.

Deputy Comptroller General
of the United States